

Appl. No. 10/040,572

Amendment dated February 19, 2004

Reply to Office Action mailed November 19, 2003 (Paper No. 1103)

REMARKS/ARGUMENTS

The above-identified patent application has been reviewed in light of the Examiner's Action mailed 19 November 2003 (Paper No. 1103). Claims 11 and 13 were pending. Claim 11 has been amended herein. As set forth more fully below, reconsideration and withdrawal of the Examiner's rejections of the claims are respectfully requested.

Rejections Under 35 U.S.C. § 112, Second Paragraph

The Examiner has rejected Claims 11 and 13 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner notes two phrases recited in Claim 11 which lack antecedent basis. With this amendment, Applicants have amended Claim 11 to provide antecedent basis for these phrases. Applicants therefore submit that Claims 11 and 13, as amended, are sufficiently definite to meet the requirements of 35 U.S.C. § 112, second paragraph.

Double Patenting

The Examiner has rejected Claims 11 and 13 under 35 U.S.C. § 101 as having identical subject matter as Claims 8 and 9 of U.S. Patent No. 6,413,556. Applicants have amended Claims 11 and 13 such that they are not identical to Claims 8 and 9 of the 6,413,556 patent. Specifically, Claims 11 and 13 are now directed to the preferred embodiment wherein the anti-apoptotic composition is isolated from a soy protein isolate: soy lipid mixture having a ratio of 4:1 which is not identical to Claims 8 and 9 of U.S. Patent No. 6,413,556.

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The Examiner has rejected Claims 11 and 13 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over Claim 7 of U.S. Patent No. 6,413,556. Included herewith is a terminal disclaimer over U.S. Patent Nos. 6,413,556 in compliance with 37 C.F.R. § 3.73(b).

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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